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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,434	11/01/2001	Toshifumi Yamamoto	21551IUS2SPCT	3102
22850	7590	08/20/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
DANIEL JR, WILLIE J				
ART UNIT		PAPER NUMBER		
2617				
NOTIFICATION DATE		DELIVERY MODE		
08/20/2009		ELECTRONIC		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOSHIFUMI YAMAMOTO

Appeal 2009-003325
Application 09/926,434
Technology Center 2600

Decided: August 18, 2009

Before KENNETH W. HAIRSTON, JOHN C. MARTIN,
and BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 24, 26 to 28, 63, 65, and 66. Claim 66 was canceled in an Amendment After Final. Accordingly, claims 24, 26 to 28, 63, and 65 remain before us on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We sustain the anticipation rejection of claims 24, 28, and 63, and reverse the obviousness rejection of claims 24, 26 to 28, 63, and 65.

Appellant has invented a mobile communication terminal connectable to a car mounted electronic device for hands-free operation. After the hands-free operation is established, the connection control section of the mobile communication terminal will disconnect the hands-free connection with the car mounted electronic device if a periodic acknowledgement from the car mounted electronic device is not received by the connection control section of the mobile communication terminal for a predetermined time period (Figs. 1, 2; Spec. 27 to 29).

Claim 24 is the only independent claim on appeal, and it reads as follows:

24. A mobile communication terminal connectable to a car mounted electronic device, the mobile communication terminal comprising:

- a first interface for making radio communication with a mobile communication network;

- a second interface for making radio communication with the car mounted electronic device; and

- a connection control section for controlling connection to the car mounted electronic device;

- wherein the connection control section starts a connection procedure with the car mounted electronic device by transmitting a response signal that includes attribute information of the mobile communication terminal to the car mounted electronic device when a paging signal transmitted from the car mounted electronic device to determine a presence of a mobile communication terminal within a radio area of the car mounted electronic device is detected, and sets communication mode in a hands-free mode

automatically if the connection procedure is completed, disconnects the connection with the car mounted electronic device and sets the communication mode in its own communication mode if no packet, which is periodically output from the car mounted electronic device for acknowledgement of the hands-free connection, is received for a predetermined time period.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Chen	US 5,751,719	May 12, 1998
Raith	US 6,493,550 B1	Dec. 10, 2002 (filed Nov. 20, 1998)
Chennakeshu	US 6,542,758 B1	Apr. 1, 2003 (filed Jul. 22, 1999)
Larsson	US 6,697,638 B1	Feb. 24, 2004 (filed Oct. 29, 1999)

The Examiner rejected claims 24, 28, and 63 under 35 U.S.C. § 102(e) based upon the teachings of Larsson.

The Examiner rejected claims 24, 26 to 28, 63, and 65 under 35 U.S.C. § 103(a) based upon the teachings of Chennakeshu, Raith, and Chen.

In response to the Examiner's position (Ans. 10 and 11) that the Bluetooth mode described at columns 8, lines 9 to 11, and 18 to 20 of Larsson teaches disconnect of the hands-free mode by the mobile handset as set forth in the claims on appeal, Appellant argues (Reply Br. 2) that "there is no mention or description of a disconnection of a connection" in the cited portion of Larsson, and that "it is the car kit which disconnects the connection and not the mobile phone" in Larsson.

In response to the Examiner's position (Ans. 8) that Chen describes a disconnect of a hands-free mode, and a setting of the hands-free communication mode to another mode if a data packet is not received in a predetermined time period, Appellant argues (Reply Br. 2 and 3) that Chen is silent as to a hands-free mode and another communication mode, that Chen does not switch over to any communication mode if a disconnection occurs during communication, and that the only disconnection in Chen appears to be a disconnection due to a degradation of transmission quality during voice communication. Appellant argues (App. Br. 7) that "even if the three patents were combined in the manner suggested by the Examiner, the claimed invention could not result because there is a missing element."

ISSUES

Anticipation

Has Appellant demonstrated that the Examiner erred by finding that the referenced portion of Larsson describes disconnection of the hands-free mode by the mobile handset?

Obviousness

Has Appellant demonstrated that the Examiner erred by finding that Chen describes disconnection of a hands-free mode by a mobile communication terminal as set forth in the claims on appeal?

FINDINGS OF FACT (FF)

1. As indicated *supra*, the connection control section of Appellant's disclosed and claimed mobile communication terminal will disconnect the

hands-free mode if a periodic acknowledgement signal is not received for a predetermined time period.

2. Larsson describes a Bluetooth park mode in which the handset will automatically de-activate the hands-free (HF) mode if a signal is not received for a predetermined time period from the car mounted electronic kit (col. 8, ll. 1 to 11).

3. The Examiner indicates (Ans. 7), and Appellant does not disagree, that “[t]he combination of Chennakeshu and Raith does not specifically disclose having the feature disconnects the connection with the car mounted electronic device and sets the communication mode in its own communication mode if no packet, which is periodically output from the car mounted electronic device for acknowledgement of the connection, is received for a predetermined time period.”

4. Chen describes a data transfer method and system in which data packets successfully received by a receiver are store in a buffer so that if a disconnect occurs between the transmitter and the receiver the transmitter will not have to re-transmit correctly received data packets to the receiver (Figs. 2 and 3A; col. 9, l. 51 to col. 10, l. 25). An acknowledgement signal is periodically transmitted after a certain number of data packets have been received in succession (col. 10, ll. 11 to 14).

PRINCIPLES OF LAW

Anticipation

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of

the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Obviousness

The Examiner bears the initial burden of presenting a prima facie case of obviousness, and the Appellant has the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

Anticipation

Although the car kit in Larsson controls most of the Bluetooth operating modes between the car kit and the mobile handset, Larsson does give the mobile handset control of the hands-free mode during a park mode, and the mobile handset will disconnect the hands-free mode if a signal is not received for a predetermined time period from the car mounted electronic kit (FF 2). Thus, it follows that anticipation has been established by the Examiner because Larsson does disclose each and every limitation of the claimed invention set forth in claims 24, 28, and 63. *Atlas Powder Co.*, 190 F.3d at 1347; *Paulsen*, 30 F.3d at 1478-79.

Obviousness

A prima facie case of obviousness of the claimed subject matter set forth in claims 24, 26 to 28, 63, and 65 has not been established by the Examiner because the data packet buffering and acknowledgement signal teachings of Chen (FF 4) fail to cure the noted lack of a teaching of a disconnection of a hands-free communication mode after a predetermined

period of time in the teachings of Chennakeshu and Raith (FF 3). *Oetiker*, 977 F.2d at 1445.

CONCLUSIONS OF LAW

Anticipation

Appellant has not demonstrated that the Examiner erred by finding that the referenced portion of Larsson describes disconnection of the hands-free mode by the mobile handset.

Obviousness

Appellant has demonstrated that the Examiner erred by finding that Chen describes disconnection of a hands-free mode by a mobile communication terminal.

ORDER

The decision of the Examiner rejecting claims 24, 28, and 63 under 35 U.S.C. § 102(e) is affirmed. The decision of the Examiner rejecting claims 24, 26 to 28, 63, and 65 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

KIS

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